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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,676	12/24/2002	Takashima Mitsuru	7266/66308-RDK	2637

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08/13/2004

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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,676	MITSURU, TAKASHIMA	
	Examiner	Art Unit	
	Charles A. Marmor, II	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed June 18, 2004. The Examiner acknowledges the Amendments to the Specification, the Drawings, and to claims 2-5. Claims 2-5 are currently pending.

Drawings

2. The drawings were received on June 18, 2004. These drawings are acceptable.

Specification

3. The disclosure is objected to because of the following informalities: In the first paragraph on page 8 (as amended), at line 2, "compartments" apparently should read --compartment--. Appropriate correction is required.

Claim Objections

4. Claim 2 is objected to because of the following informalities: in line 10, "airtight" apparently should read --air--. Appropriate correction is required.
5. Claim 3 is objected to because of the following informalities: in line 6, "compartments" apparently should read --compartment--. Appropriate correction is required.

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6. Claim 5 is objected to because of the following informalities: in line 1, "A biomedical" apparently should read --The biomedical--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the claim language renders the claim indefinite. The limitations recited at lines 13-14 and lines 18-20 make it unclear whether the compartments are actually part of the plurality of closed air type sound sensors including either a non-directional microphone or a pressure sensor or if the closed compartments are merely in communication with the plurality of closed air type sound sensors.

Further regarding claim 2, the limitation occurring at lines 20-21 renders the claim indefinite as it is unclear whether the plurality of closed air type sound sensors include either a non-directional microphone or a pressure sensor as recited in lines 8-9, or if the plurality of closed air type sound sensors include both non-directional microphones and pressure sensors in the same embodiment. This question is also raised by limitations occurring in claim 3, lines 2-5; claim 4, lines 2-5; and claim 5, lines 5-7.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 2-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Scanlon ('005).

Scanlon teaches acoustic monitoring systems for collecting biomedical information. The systems **12** include a plurality of closed compartments **11** defined by partitions **22**. The systems and partitions are made of an airtight, flexible material (see at least column 7, lines 51-54). Each compartment has a variable internal volume and is made of rubber or plastic materials (col. 4, lines 57-60). Each compartment is filled with a fluid and a spring member in the form of foam, suspension structures or partitions. Air is a type of fluid. A closed air type sound transducer **14** in the form of a microphone (col. 1, line 66 - col. 2, line 2) or pressure sensor (col. 4, lines 40-41) detects and converts fluid pressure in each of the compartments into an electric signal. The apparatus can be built into a crib, seat or gurney where the body-contacting surface of the crib, seat or gurney forms a plate-shaped member on the plurality of closed compartments, which may be spaced apart or adjacent to one another. The sound transducer **14** can include a sound transducer in each of the closed compartments (fig. 3) or can be mounted at an end portion of a hose **16** connected to the closed compartments (fig. 2). The air pressures within the closed compartments, when a living body is placed on the closed compartments, are detected by the sound sensor to measure biomedical information such as breathing, heart rate and movement of the living body (col. 2, lines 24-27).

Allowable Subject Matter

11. Claim 5 apparently would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

No prior art of record teach or fairly suggest a biomedical information collection apparatus, as claimed by Applicant, where each of the closed compartments includes a microscopic pinhole to establish an air leak countermeasure to minimize an influence on the sound sensors.

Response to Arguments

13. Applicant's arguments, see pages 10 and 11, filed June 18, 2004, with respect to the objections to the specification, the objections to the drawings, the rejections of claims 2-5 under 35 U.S.C. 112, second paragraph and the rejection of claim 2 under 35 U.S.C. 101 have been fully considered and are persuasive. Therefore, the aforementioned objections and rejections have been withdrawn. However, upon further consideration and in view of Applicant's amendments to the claims, new grounds of rejection under 35 U.S.C. 112, second paragraph are set forth hereinabove.

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14. Applicant's arguments filed June 18, 2004 with respect to the rejections of claims 2-4 under 35 U.S.C. 102(b) have been fully considered but they are not persuasive. Applicant contends that Scanlon does not disclose a plurality of closed compartments, and that the apparatus disclosed by Scanlon is merely a fluid filled chamber having dimensions "as large as a person's torso, referencing column 4, lines 39 and 51-57 of the Scanlon '005 patent. Applicant further contends that since the Scanlon structure is formed differently from that of the presently claimed invention, claims 2-4 of the instant application cannot be anticipated by Scanlon. This argument is not persuasive as the Examiner respectfully disagrees with Applicant's arguments.

The Examiner respectfully points out that Applicant's arguments solely rely on one embodiment of the apparatus of Scanlon. Figure 3 of the Scanlon patent discloses an embodiment of a sensor pad where partitions divide the pad into a plurality of closed compartments made of an airtight, flexible material (col. 7, lines 44-54). The transitional phrase "comprising" used in claim 2 of the instant application is inclusive or open-ended and does not exclude additional, unrecited elements. Therefore, at least the plurality of compartments defined as the four compartments disposed at the corners of the pad are spaced apart from one another. Each of the compartments has a variable internal volume, has a spring member inside of the compartment, and is in communication with a sound sensor including a non-directional microphone or a pressure sensor. The pad can be built into a crib, seat or gurney where the body-contacting surface of the crib, seat or gurney forms a plate-shaped member on the plurality of closed compartments. In view of the foregoing, the multi-chamber embodiment of the apparatus of Scanlon ('005) meets all of the structural limitations of the instant invention as

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claimed. Therefore, the rejections of claims 2-4 under 35 U.S.C. 102(b) as anticipated by Scanlon are maintained.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

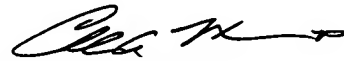
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (703) 305-3521. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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August 10, 2004